



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 6506409

Date: JAN. 7, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a transportation engineering researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

The Petitioner received a Master of Science degree in transportation engineering from [REDACTED] University [REDACTED] in May 2012. Accordingly, the Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as a graduate research assistant in the Department of Transportation and Urban Infrastructure at [REDACTED]. After completing her Ph.D. program in civil engineering at [REDACTED], the Petitioner stated that she plans "to work as a postdoctoral researcher in the field of civil and transportation engineering."<sup>4</sup>

### A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that she intends to continue her research aimed at traffic signal systems and connected vehicle technologies. She explained that her proposed research involves "[REDACTED]"

In addition, the Petitioner asserted she plans to undertake research relating to "wireless connected vehicle to vehicle technology." The Petitioner stated that her proposed research will help reduce traffic accidents, lessen greenhouse gas emissions, and improve transportation mobility. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of her work. The record includes a letter of support from [REDACTED] professor and director of the University Transportation Center at [REDACTED] discussing the potential benefits of Petitioner's proposed research and how it stands to advance connected vehicle development. He stated that the Petitioner's undertaking supports "a range of safety and mobility applications of interest to the public and private sectors." In addition, the Petitioner offered a letter from [REDACTED] a program manager and traffic operations specialist at [REDACTED] asserting that the Petitioner's proposed endeavor contributes "toward the development of new technology that can make our transportation system safer and more efficient." The record also contains documentation indicating that the benefit of the Petitioner's proposed research has broader implications, as the results are disseminated to others in the field through engineering conferences. As

<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her current and prospective positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

the Petitioner has documented both the substantial merit and national importance of her proposed research, we agree with the Director that she meets the first prong of the *Dhanasar* framework.<sup>5</sup>

## B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner.<sup>6</sup> The record includes documentation of the Petitioner's curriculum vitae, academic credentials, Institute of Transportation Engineers membership, her research paper entitled [REDACTED] and conference presentations. She also offered a certificate indicating that she received a "[REDACTED] Program Achievement Award" (2011) and reference letters discussing her graduate research activities at [REDACTED]. For the reasons discussed below, the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance her proposed research under *Dhanasar*'s second prong.

The Petitioner contends that her academic qualifications, research projects, and work experience indicate that she is well positioned to advance her proposed endeavor. In letters supporting the petition, several of the Petitioner's colleagues discussed her prior transportation engineering research projects.<sup>7</sup> For example, [REDACTED] professor and chair of the Department of Transportation and Urban Infrastructure at [REDACTED] stated: "In her master's degree thesis, [the Petitioner] successfully researched and demonstrated the operational benefits and safety implications of [REDACTED] technology." [REDACTED] further asserted that the Petitioner "has developed a promising concept in providing trainings and facilitating technology sharing to support the emerging market of autonomous/connected vehicles."

In addition, [REDACTED] indicated that the Petitioner "designed a business plan/model for the establishment of an innovative research and training center for connected vehicle-to-vehicle and to-infrastructure research in the [REDACTED] area," but the record does not show that her business plan/model has generated positive interest among relevant parties, has been implemented in the [REDACTED] area or any other region, or otherwise reflects a record of success in transportation engineering research. With respect to the Petitioner's [REDACTED] Program Achievement Award, [REDACTED] noted that she was an [REDACTED] and Universities Fellow funded by the U.S. Department of Transportation "to conduct research and earn a degree in a transportation-related field." The Petitioner, however, has not demonstrated that receiving this award or fellowship represents a record of success in her field or is otherwise an indication that she is well positioned to advance her proposed [REDACTED] systems and connected vehicle research.

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<sup>5</sup> With respect to the Petitioner's proposed teaching duties relating to college engineering courses, while this work has substantial merit, the record does not establish that her instructional work would impact the field of transportation engineering or the U.S. transportation industry more broadly, as opposed to being limited to her students. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner's proposed teaching activities do not meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

<sup>6</sup> As previously noted, her proposed teaching duties do not meet the first prong of the *Dhanasar* framework. Because the Petitioner's proposed transportation engineering research has broader implications for the field (unlike her work as an instructor), our analysis under this prong will focus on whether she is well positioned to advance her proposed research relating to [REDACTED] systems and connected vehicle technologies.

<sup>7</sup> We discuss only a sampling of these letters, but have reviewed and considered each one.

Furthermore, [REDACTED] an adjunct instructor of chemical engineering at [REDACTED] University, contended that the Petitioner is “at the cutting edge of the field of [REDACTED] devices.” He also stated that he “believe[s] that many local and state governmental bodies will be interested in implementing her ideas into practice,” but the record does not include corroborating evidence from such bodies indicating that the Petitioner’s [REDACTED] work stands to be utilized anywhere in the United States.

The record demonstrates that the Petitioner has conducted, authored, and presented research during her graduate studies. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance her proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not shown that her published and presented work has served as an impetus for progress in the transportation engineering field, that it has affected local or regional transportation systems, or that it has generated substantial positive discourse in the engineering community. Nor does the evidence otherwise demonstrate that her work constitutes a record of success or progress in advancing research aimed at traffic signal systems and connected vehicle technologies. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance her proposed research endeavor, she has not established that she satisfies the second prong of the *Dhanasar* framework.

### C. Balancing Factors to Determine Waiver’s Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that she is eligible for a waiver due to her education, research skills and accomplishments, and the importance of her field. However, as the Petitioner has not established that she is well positioned to advance her proposed endeavor as required by the second prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

## III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.